

## **MARK-UP**

### **HSC REGULATION 500M. Assisted Living Methodology (10/03)**

- A. ASSISTED LIVING FACILITY** means any building or buildings, section or distinct part of a building, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator. Assisted living facility includes those facilities which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents.

### **SECTION II- SERVICE AREA is the county.**

### **SECTION III- NEED**

#### **A. POPULATION BASED NEED**

This methodology projects the need for Assisted Living beds at 15 beds per 1000 persons who are 65 years old and older. Need will be projected five years forward using the most recent census data available from the UALR Institute for Economic Advancement.

#### **B. UTILIZATION BASED NEED**

- A. Assisted Living Facilities may acquire 10% of their licensed beds or 10 beds, whichever is greater, if the applicant:
1. has an average occupancy of at least 90% or greater in the 2 most recent survey inspections available from the Department of Human Services Office of Long Term Care.
  2. has no approved but unlicensed beds at the time of the application.
  3. has no current Class A or Class B deficiencies from the DHS Office of Long Term Care.

### **SECTION IV- SIZE**

While there is no required minimum size, the recommended minimum size for achieving basic operational efficiency is 40 beds. Smaller projects may be more feasible for counties or communities that do not have the population base to support a 40-bed facility. However, smaller facilities have higher costs and applicants proposing a facility smaller than 40 beds will be subject to a higher level of justification under the Market Study and the Financial Feasibility Section of the application. A maximum of 80 beds will be awarded to any one applicant per cycle under the population based methodology.\*

## **SECTION V - CONVERSIONS**

Nursing Homes that wish to convert beds to Assisted Living beds may convert a minimum of 10 beds and a maximum of 80 beds.

## **SECTION VI - PRIORITY**

A. Priority for new construction or expansion will be given to an applicant who demonstrates that:

1. The proposed application will serve low-income elderly residents. \*
2. Existing assisted living beds do not meet the needs of the low-income elderly in the service area and
3. Is able to provide documentation of pending application with Arkansas Finance Development Authority for tax credit, or with HUD, Rural Development Authority or other low interest loans, grants, or tax credits.

*\* According to the National Housing Survey of Adults Age 60+: opinions, Attitudes, Perceptions and Behaviors, The greatest demand for seniors housing is from people with lower incomes.*

B. Applicants who document receipt of tax credit from the Arkansas Finance Development Authority will receive priority for Assisted Living Permits of Approval regardless of population based need. (See footnotes)

## **SECTION VII - UNFAVORABLE REVIEW**

A. Existing facilities will have an unfavorable review if the following quality of care standards are not met:

1. No Nursing Home will be awarded a permit of approval if the existing facility has had an H level or higher deficiency according to the Office of Long Term Care in any inspection within the last 12 months preceding the date the application is placed under review or from the date the application is placed under review until the final decision of the Health Services Commission.
2. No Assisted Living or Residential Care Facility will be awarded a permit of approval if the existing facility has had more than two (2) Class A or Class B violations pursuant to ACA § 20-10-205 in any inspection within the last 12 months preceding the date the application is placed under review or from the date the application is placed under review until the final decision of the Health Services Commission.

## **VIII - REVIEW CRITERIA**

A. The Agency and the Commission will utilize the following criteria in the review

process.

1. Whether the proposed project is needed or projected as necessary to meet the needs of the population. Criteria includes:
  - a. Review of a detailed market feasibility study.
2. Whether the project can be adequately staffed and operated when completed. Criteria includes:
  - a. Projected sources of staffing.
3. Whether the proposed project is economically feasible.
4. Whether the project will foster cost containment.

**Footnotes:**

*The Arkansas Legislature adopted Act 1230 in 2001 that established Assisted Living in Arkansas. The Act “encourages the development of innovative and affordable facilities particularly for persons with low to moderate incomes.” Because federal laws and rules prohibit Medicaid from paying room and board costs other than in a nursing home, developing affordable Assisted Living is challenging. The main vehicle for developing affordable Assisted Living is the Low Income Tax Credit program. The Arkansas Finance Development Authority (AFDA) recognizes Assisted Living as a priority for Arkansas and has created a “set-a-side” from its Tax Credits specifically for affordable Assisted Living. However, Tax Credits alone are usually not adequate to build an affordable Assisted Living facility. Other financing mechanisms must be “layered” or combined with the Tax Credits. Chief among these are the HOME program and grants from the Federal Home Loan Bank. Unfortunately, the Federal Home Loan Program, the AFDA Tax Credit Program, and the Health Permit Agency all have different time tables for accepting and awarding applications. This makes the creation of affordable Assisted Living almost impossible. To eliminate barriers to affordable Assisted Living and to encourage innovative and affordable models as called for in Act 1230, the Arkansas Health Services Permit Agency (HSPA) will give priority to an applicant that receives Tax Credits from AFDA. AFDA Tax Credits are awarded on a competitive basis. Applicants must submit a marketing study documenting the need for affordable Assisted Living. Therefore, HSPA will accept approval of Tax Credits as establishing a need for affordable Assisted Living.*

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

<b>DEPARTMENT/AGENCY</b>	Health Services Permit Agency
<b>DIVISION</b>	
<b>DIVISION DIRECTOR</b>	Deborah Frazier
<b>CONTACT PERSON</b>	Mary Brizzi
<b>ADDRESS</b>	5800 W. 10 <sup>th</sup> St. Little Rock, AR 72204
<b>PHONE NUMBER</b>	501-661-2501 <b>FAX NO.</b> 501-661-2399 <b>E-MAIL</b> mbrizzi@healthyarkansas.com

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Research  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

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1. What is the short title of this rule?

Assisted Living Methodology

2. What is the subject of the proposed rule?

Assisted Living Permit of Approval Bed Need Methodology

3. Is this rule required to comply with federal statute or regulations? Yes ☐ No ☒

If yes, please provide the federal regulation and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒

If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act?  
Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No ☒ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☒ No ☐ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up should be clearly labeled "mark-up".

6. Cite the state law that grants the authority for this proposed rule. If codified, please give Arkansas Code citation.

Arkansas Code Annotated 20-8-103. This code gives us both the broad authority to promulgate rules and the specific authority for this regulation.

7. What is the purpose of this proposed rule? Why is it necessary?

This change puts a cap on the number of beds one applicant can apply for in one application cycle. This will distribute the beds among providers and help ensure financial feasibility.

8. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: December 10, 2004

Time: 10:00

Place: State Police Headquarters

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

November 19, 2004

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

January 16, 2005 or 10 days after it is filed as a final rule.

11. Do you expect this rule to be controversial? Yes ☐ No ☒ If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.

Names	Category	For	Against
Arkansas Health Care Association	Trade	<input type="checkbox"/>	<input type="checkbox"/>
Arkansas Residential Assisted Living Association	Trade	<input type="checkbox"/>	<input type="checkbox"/>
AARP		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

[illegible]

## FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT: \_\_\_\_\_ Health Services Permit Agency  
DIVISION: \_\_\_\_\_  
PERSON COMPLETING THIS STATEMENT: \_\_\_\_\_ Mary Brizzi  
TELEPHONE NO.: 501-661-2501 FAX NO.: 501-661-2399 EMAIL: mbrizzi@healthyarkansas.com

## FINANCIAL IMPACT STATEMENT

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

### SHORT TITLE OF THIS RULE:

Assisted Living Methodology

- Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes ☒ No ☐
- If you believe that the development of a financial impact statement is so speculative as to be cost prohibitive, please explain.  
No
- If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

### Current Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

### Next Fiscal Year

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

- What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

### Current Fiscal Year

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

### Next Fiscal Year

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

**Current Fiscal Year**

\$300.00

\$

**Next Fiscal Year**

\$

\$